



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901

www.co.monterey.ca.us

Board Order

Agreement No. A-14335

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor Jane Parker to:

a. Approve and authorize the Director of Health or Assistant Director of Health to sign a Master Services Agreement with Accela, Inc. for the provision of software license subscription, software maintenance/support in a vendor hosted data environment, and professional services as needed for the term retroactive to July 1, 2018 through June 30, 2021 in an aggregate amount not to exceed \$220,082, including non-standard terms regarding limitation of liability and indemnification as recommended by the Director of Health; and b. Approve and authorize the Director of Health or Assistant Director of Health to approve up to three (3) future amendments that do not exceed ten percent (10%) (\$22,009) of the original Master Services Agreement amount and do not significantly alter the scope of services.

PASSED AND ADOPTED on this 11th day of June 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Lopez, Parker and Adams

NOES: None

ABSENT: Supervisor Phillips

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting June 11, 2019.

Dated: June 11, 2019

File ID: A 19-168

Agenda Item No.: 33

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

A handwritten signature in black ink, appearing to read "Valerie Ralph", written over a horizontal line.

Valerie Ralph, Clerk of the Board

ACCELA MASTER SERVICES AGREEMENT – SOFTWARE AS A SERVICE

This Accela Master Services Agreement (this “**Agreement**”) is entered into as of the date of last signature (the “**Effective Date**”) by and between Accela, Inc. and **County of Monterey** identified on the Order (“**Customer**”), together referred to as the “**Parties**” and each individually as a “**Party**.” Specific services terms, product details, and any applicable license and/or subscription terms will be set forth in applicable Order Form(s) and Statements of Works (“**SOW**”), which shall become binding on the Parties and subject to this Agreement.

Purchase or use of the Subscription Service (defined below) is subject to this Agreement. If Customer is entering into this Agreement on behalf of a company, organization or another legal entity (an “**Entity**”), Customer is agreeing to this Agreement for that Entity and representing to Accela that it has the authority to bind such Entity to this Agreement.

1. DEFINITIONS

1.1 “**Account**” means a unique account established by Customer to enable its Authorized Users to access and use the Subscription Services.

1.2 “**Authorized User**” means one individual natural person, authorized by Customer to use the Subscription Service and for whom Customer has purchased a subscription to the Subscription Service. Authorized Users may include but are not limited to Customer’s employees, contractors and agents. Each Authorized User will be associated with a single, unique email address for purposes of accessing (and being identified within) the Subscription Service.

1.3 “**Customer Data**” means any and all content, eDocuments, materials, data and information that Customer, its Authorized Users, or other end users enter into the Subscription Services including but not limited to, personal information, information exchanged between Customer and Authorized User or Authorized User and a third party using the Subscription Services, information used to identify account names or numbers, routing information, usernames, passwords, access codes and prompts. Customer Data does not include any component of the Subscription Services or material provided by or on behalf of Accela.

1.4 “**Customer**” means the entity that purchases a subscription to the Subscription Service, directly from Accela or through an authorized reseller, distributor, or other channel partner of Accela.

1.5 “**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.6 “**Optional Subscription Services**” mean the optional add-ons to the Subscription Service that may be available for purchase either directly from Accela or through an authorized reseller or partner of Accela, as more particularly described or identified in the applicable Order Form.

1.7 “**Order Form**” means written orders provided by Accela that sets forth the pricing and options of the Subscription Services (or, where applicable, to purchase Optional Subscription Services).

1.8 “**Subscription Service(s) or Service**” means the cloud-based network security service(s) for which Customer has obtained a subscription either directly from Accela or through an authorized reseller or other partner of Accela, as more particularly described in the applicable agreement or order under which such subscription was obtained. Unless otherwise specified herein or other applicable contractual terms, all references to “**Subscription Service(s)**” will be deemed to include any and all Optional Subscription Services.

1.9 **“Software”** means any software (including client software for Authorized Users’ devices) that Accela makes available for download or otherwise provides for use with the Subscription Service.

1.10 **“Specifications”** means the online specifications for the Subscription Service attached as Exhibit A and incorporated as part of this Agreement, which may be updated from time to time by Accela upon prior written notice to Customer, any such changes shall not materially diminish or denigrate the Service.

1.11 **“Subscription Period(s)”** means the duration of Customers and Authorized User’s active, paid access to the Subscription Service, as designated in the Order Form(s).

1.12 **“Supported Modification”** means a configuration of or modification to the Subscription Service requested by Customer that can be consistently supported by Accela, does not require direct database changes and is capable of being tested and maintained by Accela.

2. USAGE AND ACCESS RIGHTS

2.1. **Right to Access.** Accela hereby grants to Customer a limited, non-exclusive, non-transferrable right to (a) access and use the Services and (b) implement, configure and permit its Authorized Users to access and use the Services during the Subscription Period, solely for its and its affiliates’ internal business purposes, and in accordance with the Specifications. Customer may purchase the Services by submitting Order Forms. No Order Form will be deemed accepted by the Parties unless and until Accela accepts such Order Form in writing. Upon Order Form acceptance and subject to Customer’s payment of the corresponding Services fees, Accela will make the Services available to Customer. Any terms and conditions contained in any quote, invoice, purchase Order Form or Order Form that are inconsistent with the terms and conditions of this Agreement will be deemed stricken, unless expressly agreed to in writing by Accela with explicit reference to the accepted terms and conditions. Upon acceptance of an Order Form, it will become part of this Agreement. Customer will ensure that all its Authorized Users using the Subscription Services under its Account comply with all of Customer’s obligations under this Agreement, and Customer is responsible for their acts and omissions relating to the Agreement as though they were those of Customer.

2.2. **Restrictions on Use.** Customer shall not, and shall not permit its Authorized User, employees, contractors or agents to, do the following with respect to the Subscription Services:

- 2.2.1. make the Subscription Service available to anyone other than Authorized Users;
- 2.2.2. use the Subscription Services, or allow access to it, in a manner that circumvents contractual usage restrictions or that exceeds Customer’s authorized use or usage metrics as set forth in this Agreement, including the applicable Order Form;
- 2.2.3. license, sub-license, sell re-sell, rent, lease, transfer, distribute or time share or otherwise make any portion of the Subscription Services available for access by third parties except as otherwise expressly provided in this Agreement or the express permission of Accela;
- 2.2.4. use the Subscription Service in a way that (i) violates or infringes upon the rights of a third party, including those pertaining to: contract, intellectual property, privacy, or publicity; or (ii) effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene;

- 2.2.5. access or use the Subscription Services for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Subscription Services or allow access by a direct competitor of Subscription Services;
- 2.2.6. obtain intellectual property rights to the use of any component of the Subscription Services (inclusive of APIs);
- 2.2.7. Create derivative works based on the Subscription Service;
- 2.2.8. reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the Subscription Services or technologies, other than copying or framing on Customer's own intranets or otherwise for Customer's internal business purposes in accordance with Accela's applicable documentation;
- 2.2.9. interfere with or disrupt the integrity, operation, or performance of the Subscription Services or interfere with the use or enjoyment of it by others by, among other things, using it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs or circumvent or disclose the user authentication or security of the Subscription Services or any host, network, or account related thereto or use any aspect of the Subscription Service components other than those specifically identified in an Order Form, even if technically possible. Accela assumes no responsibility for any fraudulent or unauthorized use of the Software or any portion of the Subscription Services.
- 2.2.10. Use or allow the use of, the Subscription Services by anyone located in, under the control of, or that is a national or resident of a U.S. embargoed country or territory or by a prohibited end user under Export Control Laws (as defined in Section 12.3)

2.3. **Data Usage and Storage.** The Subscription Service is provided with a limit of two point five tera bites (2.5TB) of data storage for all cloud environments. Additional storage can be purchased from Accela by Customer in blocks of five hundred gigabytes (500GB), with a price of one thousand dollars (\$1,000) per year. If the Subscription Service is nearing its expiration date or is otherwise terminated, Accela will initiate its data retention processes, including the deletion of Customer Data from systems directly controlled by Accela. Accela's Data Storage Policy can be accessed <https://accela.box.com/v/DataStoragePolicy> attached as Exhibit B and incorporated as part of this Agreement, which may be updated from time to time by Accela upon prior written notice to Customer, any such changes shall not materially diminish or denigrate the Service.

2.4. **Accela's Responsibilities.** Accela will: (i) make the Subscription Services available to Customer pursuant to this Agreement and any applicable Order Forms; (ii) provide to Customer support related to the Subscription Service in accordance with the Accela Support Terms accessible at <https://accela.box.com/SaaSsupportPolicy> attached as Exhibit C and incorporated as part of this Agreement, which may be updated from time to time by Accela upon prior written notice to Customer, any such changes shall not materially diminish or denigrate the Service; and (iii) provide the Subscription Service only in accordance with applicable laws and government regulations.

2.5. **Customer's Responsibilities.** Customer will (i) be responsible for meeting Accela's applicable minimum system requirements for use of the Subscription Service; (ii) be responsible for Authorized Users' compliance with this Agreement and for any other activity (whether or not authorized by Customer) occurring under Customer's account, (iii) be solely responsible for the accuracy, quality, integrity and legality of Customer Data, (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Service under its account, and notify Accela promptly of any such unauthorized access or use, and (v) use the Subscription Service only in accordance with the applicable documentation, laws and government regulations, and any written instructions provided by Accela to Customer.

3. PAYMENT TERMS.

3.1. **Invoicing and Payment.** Accela will invoice Customer in advance for the Subscription Service. Subscription Service fees are due upon invoice and payable within thirty (30) days of the receipt of the invoice by the

Monterey County Auditor-Controller's Office. Subscription Service fees will be due no later than the first day of each Subscription Period to which the payment relates. If Customer orders additional Authorized User quantities part-way through an existing Subscription Period, and the initial Subscription Period for the additional quantity is adjusted as described herein, then the Subscription Service fee for such additional quantity will be pro-rated accordingly. Optional Subscription Services will be due at the same time as payment for the corresponding Subscription Service, or (if applicable) as otherwise specified in the applicable Order Form or governing terms. Subscription Service fees will be subject to an automatic annual increase by not more than seven percent (7%) of the prior year's Subscription Service fees ("Uplift"). Customer is responsible for keeping Accela accurately and fully informed of Customer's billing and contact information, including providing any purchase order numbers in advance of invoice issuance. Upon execution by Customer and Accela, each Order Form and/or SOW is non-cancellable and non-refundable except as provided in this Agreement.

3.2. Overdue Charges. If any fees owed are not received from Customer by the due date, then without limiting Accela's rights or remedies, those charges will accrue late interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

3.3. No Requirement for Purchase Order. Customer acknowledges that a purchase order is not required and is for administrative convenience only, and that Accela has the right to issue an invoice and collect payment without a corresponding purchase order with a written request and approval by County for professional services and technical support not covered under the recurring software license subscription costs. Provided, however, that if a Customer's procurement procedure requires a purchase order number on a pertinent Order or SOW, the purchase order is required to be provided to Accela. If the Customer issues a purchase order, then it shall be for the full amount set forth in the applicable Order or SOW, and Accela hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by Customer.

3.4. Suspension of Service and Acceleration. Excepting in the event of a good faith dispute between the Parties, if any amount owing by Customer under this Agreement for any of the Subscription Services is thirty (30) or more days overdue, Accela may, without limiting Accela's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement (including any Order Form or SOW) so that all such obligations become immediately due and payable and suspend any use of the Subscription Service until such amounts are paid in full. Moreover, if any amount owing by Customer under this Agreement for any Subscription Services is ninety (90) days delinquent, Accela may, in its sole discretion, temporarily cease providing Customer Subscription Services and/or any pertinent support until past due amounts are paid in full.

3.5. Taxes. Subscription Service fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes. If Accela has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides Accela with a valid tax exemption certificate authorized by the appropriate taxing authority prior to invoice issuance. For clarity, Accela is solely responsible for taxes assessable against it based on Accela's income, property and employees.

4. CONFIDENTIALITY

4.1. Definition. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,

(ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

4.1 Protection and Compelled Disclosure. Except as otherwise permitted in writing by the Disclosing Party and subject to the other terms of this Agreement (including Accela's Privacy Policy, accessible at <https://accela.box.com/v/PrivacyPolicyv1>, attached as Exhibit D and incorporated as part of this Agreement, which may be updated from time to time by Accela upon prior written notice to Customer, any such changes shall not materially diminish or denigrate the Service;

(i) the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are legally bound to protect such Confidential Information consistent with this Agreement. Notwithstanding any of the above to the contrary, the Parties acknowledge that Customer is a California Public Agency subject to the Brown Act, California Government Code sections 54950 et seq., and Public Records Act, California Government Code section 6250 et seq., and that this Agreement and any future amendments hereto will be presented to the Monterey County Board of Supervisors at an open and public meeting for approval, and will be available to the public for viewing and/or download on Customer's website and otherwise considered a public record pursuant to California Government Code sections 6250 et seq. and 54957.5. Except as herein provided, Customer shall promptly notify Accela in the event that any third party not bound by this Agreement requests or seeks to discover, pursuant to the California Public Records Act, subpoena, or other compulsory process, or otherwise, any documents, information or material concerning any Accela products or services. Within the time period provided by law for responding to the request or discovery, Accela shall inform Customer whether the requested documents, information, or materials constitute trade secrets (as defined under California law) or is otherwise legally exempt from disclosure ("Accela Protected Information"). If Accela informs Customer that the requested documents, information, or materials constitute trade secrets (as defined under California law) or is otherwise legally exempt from disclosure, Customer shall not disclose the Accela Protected Information unless otherwise directed by a court of competent jurisdiction. Accela shall indemnify, defend, and hold Customer harmless and, at Customer's request, Accela shall provide counsel to appear and represent Customer at Accela's sole cost and expense, in connection with any action or proceeding to compel inspection, access, disclosure, release, or other discovery of Accela Protected Information. Counsel for Customer in any such defense action or proceeding shall be selected by Accela, subject to the approval of Customer, which approval shall not be unreasonably conditioned or withheld. Accela's obligation to provide such defense includes the obligation to indemnify and hold harmless Customer, its officers, agents, and employees from and against any and all claims, costs, damages, judgments, awards (including any award of costs or attorney's fees), administrative orders, or payments in compromise and settlement, and including all direct and administrative costs, with respect to any such action or proceeding.

5. OWNERSHIP

5.1. Subscription Services. Subject to the limited rights expressly granted hereunder, Accela reserves all rights, title and interest in and to the Subscription Service, derivative works thereof, and any associated Software and documentation, including all related Intellectual Property Rights.

5.2 Customer Data. Customer reserves all its rights, title and interest in and to the Customer Data. No rights are granted to Accela hereunder with respect to the Customer Data, except that Accela may (i) store, copy, process, and transmit such Customer Data for purposes of providing the Subscription Service to Customer and (ii) otherwise utilize Customer Data if and as permitted by Accela Privacy Policy. Any/all use of Customer Data

not associated with the provision of Subscription Services to Customer by Accela shall be approved by Customer.

5.3 **Feedback.** Customer grants Accela a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Subscription Service (or Accela's other software or services) any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or Authorized Users relating to the operation or features of the Subscription Service.

6 WARRANTIES AND DISCLAIMERS

6.1. **Specifications.** Subject to the limitations set forth below, Accela warrants that, during the Subscription Period, the Subscription Service will operate in all material respects in accordance with the Specifications. As Customer's sole and exclusive remedy, excepting Customer's right to terminate this Agreement for cause pursuant to section 11.2, and Accela's entire liability for any breach of the foregoing warranty, Accela will use commercially reasonable efforts to modify the Subscription Service so that it conforms to foregoing warranty.

6.2. **Subscription Service Level Commitment.** During the Subscription Period, Accela further warrants that the Subscription Service will meet the performance level specified in Exhibit A below. The Subscription Service Level Commitment sets forth Customer's sole and exclusive remedy for Accela's failure to achieve the stated Subscription Service performance level.

6.3. **Mutual Warranties.** Each party represents and warrants that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of the Agreement; and (b) no authorization or approval from any third party is required in connection with its execution, delivery, or performance of this Agreement.

6.4. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, ACCELA DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND ACCELA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Accela will not be responsible to the extent failure of the Subscription Service to operate as warranted is caused by or results from: (i) any modification to the Subscription Service other than a Supported Modification; (ii) combination, operation or use of the Subscription Service with Customer's or a third party's applications, software or systems; (iii) abuse, willful misconduct or negligence by anyone other than Accela or Accela's designee; (iv) use of the Subscription Service other than in accordance with the terms of this Agreement and/or the applicable Specifications and Accela documentation or (v) any of the SLC Exclusions (as defined in the Subscription Service Level Commitment) Notwithstanding and of the above to the contrary, Accela specifically warrants that any software and or services provided under this Agreement, will not intentionally introduce through any media, any virus, worm, trap door, back door, bomb, bug, or other contaminant or disabling device, including without limitation, any timer, clock, counter or other limiting routines, codes, commands, or instructions that may have the effect or be used to access, alter, delete, limit, control, damage, or disable any County property.

7 INDEMNIFICATION

Indemnification by Accela.

7.1. Accela will immediately indemnify, defend, and hold harmless (or at Accela's option, settle) the County of Monterey and its elected officials, officers, employees, and agents against any and all third-party claim, suit, or action arising out of this Agreement, that the Subscription Service, as furnished by Accela hereunder, infringes or misappropriates the Intellectual Property Rights of any third-party, and will pay any and all costs, damages and reasonable attorneys' fees. Accela will have no liability under this Section 8.2 to the extent that

any third-party claims described herein are determined to be solely caused by (i) any combination of the Subscription Service with products, services, methods, or other elements not furnished by Accela; (ii) any use of the Subscription Service in a manner that violates this Agreement or the instructions given to Customer by Accela; (iii) Customer's failure to incorporate updates or upgrades that would have avoided the alleged infringement; (iv) Customer's breach of this Agreement; and/or Customer's revisions of Subscription Services made without Accela's written consent. THIS SECTION 7.1 STATES THE ENTIRE OBLIGATION OF ACCELA AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE.

7.2 **Indemnification Requirements.** In connection with any claim for indemnification under this Section 8, the indemnified party must: (a) provide the indemnifying party prompt written notice of such claim; (b) reasonably cooperate with the indemnifying party, at indemnified party's expense, in defense and settlement of such claim; and (c) give sole authority to the indemnifying party to defend or settle such claim.

7.3 **Mitigation Measures.** In the event that (i) any claim or potential claim covered by Section 7.1 arises or (ii) Accela's right to provide the Subscription Service is enjoined or in Accela's reasonable opinion is likely to be enjoined, Accela shall, in its discretion, seek to mitigate the impact of such claim or injunction by obtaining the right to continue providing the Subscription Service, by replacing or modifying the Subscription Service to make it non-infringing, and/or by suspending or terminating Customer's use of the Subscription Service with reasonable notice to Customer. In the case of a suspension or termination pursuant to this Section 7.3, Accela will refund to Customer a portion of fees prepaid by Customer for the then-current Subscription period, prorated (based on a 365 day year) to the portion of that Subscription period that is affected by the suspension or termination).

8. LIMITATIONS OF LIABILITY. NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT. THIS LIMITATION DOES NOT APPLY TO ACCELA'S DUTY TO INDEMNIFY COUNTY PURSUANT TO SECTIONS 4.2 AND 7 OF THIS AGREEMENT; NOR DOES IT APPLY TO ACCELA'S BREACH OF ANY WARRANTY PURSUANT TO SECTION 6.4 OF THIS AGREEMENT.

Exclusion of Damages. WITHOUT LIMITING OR OTHERWISE ALTERING ACCELA'S DUTY TO INDEMNIFY PURSUANT TO SECTION 7 OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY OR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SUBSCRIPTION SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTHING IN THIS AGREEMENT EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE.

8.1. **Security and Other Risks.** Customer acknowledges that, notwithstanding security features of the Subscription Service, no product, hardware, software or service can provide a completely secure mechanism of electronic transmission or communication and that there are persons and entities, including enterprises, governments and quasi-governmental actors, as well as technologies, that may attempt to breach any electronic security measure. Subject only to its limited warranty obligations set forth in Section 7, Accela will

have no liability for any security breach caused by any such persons, entities, or technologies. Customer further acknowledges that the Subscription Service is not guaranteed to operate without interruptions, failures, or errors. If Customer or Authorized Users use the Subscription Service in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, Customer assumes any associated risks and will indemnify Accela and hold it harmless against those risks.

9. SECURITY AND PERSONAL DATA

9.1. Security. Accela has implemented commercially viable and reasonable information security processes, policies and technology safeguards to protect the confidentiality and integrity of Customer Data, personal data protect against reasonably anticipated threats. Accela holds SSAE 16 /18 SOC 2, and PCI-DSS certifications and leverages certified service providers who are vetted against industry standards such as ISO 27001 and SSAE 16 / 18 SOC 2 in the provision of the service.

9.2. Customer Data. Customer shall be responsible for Customer Data as entered in to, applied or used in the Subscription Services. Customer is responsible for updating all Customer Data. In addition, Customer acknowledges that Accela generally does not have access to and cannot retrieve lost Customer Data. If Customer loses Customer Data, Customer may no longer have access to the Subscription Service. Customer grants to Accela the non-exclusive right to process Customer Data (including personal data) for the sole purpose of and only to the extent necessary for Accela: (i) to provide the Subscription Services; (ii) to verify Customer's compliance with the restrictions set forth in Section 2.2 (Restrictions) if Accela has a reasonable belief of Customer's non-compliance; and (iii) as otherwise set forth in this Agreement. Accela may utilize the information concerning Customer's use of the Subscription Services (excluding any use of Customer's personal data or Customer's Confidential Information) to improve Subscription Services, to provide Customer with reports on its use of the Subscription Services, and to compile aggregate statistics and usage patterns by customers using the Subscription Services.

9.3. Use of Aggregate Data. Customer agrees that Accela may collect, use, and disclose quantitative data derived from the use of the Subscription Services for industry analysis, benchmarking, analytics, marketing, and other business purposes. All data collected, used, and disclosed will be in aggregate form only and will not identify Customer, its Authorized Users, or any third parties utilizing the Subscription Services.

10. THIRD PARTY SERVICES

Customer may choose to obtain products or services that are provided or supported by third parties ("Third Party Services") for use with the Subscription Services. Third-Party Services are provided pursuant to the terms of the applicable third-party license or separate agreement between the licensor or provider of the Third-Party Services and Customer, and Accela assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any Third-Party Service. Further, Accela will not be responsible to the extent failure of the Subscription Service to operate as warranted is caused by or results from: (i) any modification to the Subscription Service other than a Supported Modification; (ii) combination, operation or use of the Subscription Service with Customer's or Third-Party Services; (iii) abuse, willful misconduct or negligence by anyone other than Accela or Accela's designee; (iv) use of the Subscription Service other than in accordance with the terms of this Agreement and/or the applicable Specifications and Accela documentation or (v) any of the exclusions indicated in Exhibit A.

11. SUBSCRIPTION PERIOD AND TERMINATION

11.1. Term of Authorized User Subscriptions. Authorized User Subscriptions purchased by Customer commence on the start date specified in the applicable Order Form and, unless terminated earlier in accordance with this Agreement, continue for the term specified therein (the "**Subscription Period**"). A Subscription Period and/or pricing thereon may be subject to prorating where Accela deems it appropriate to

cause newly purchased Subscriptions to expire or renew simultaneously with Customer's pre-existing Subscription(s) to ensure new subscriptions are co-terminus with the existing subscription/s. Except as otherwise specified in the applicable Order Form, all Subscriptions will automatically renew for an additional period of one year, **unless either party gives the other at least sixty (60) days' notice of non-renewal before the end of the relevant Subscription Period.** The per-unit pricing during any such renewal Subscription Period may be subject to annual Subscription Service Fee pricing increase not to exceed **seven percent (7%) of the prior year's Subscription Service fees ("Uplift")** as specified in Section 3.1 of this Agreement and as designated by Accela and with notification to Customer. Pricing increases will be effective upon renewal of the Subscription Period and annually thereafter, unless otherwise agreed to by the parties. If either party provides notice of non-renewal as set forth above, Customer's right to use the Subscription Service will terminate at the end of the relevant Subscription Period.

11.2. **Termination or Suspension for Cause.** Customer may terminate this Master Services Agreement for the Subscription Service and Software as a Service in event of reduced County funding with a sixty (60) day written notification to Accela. A party may terminate any Subscription Service for cause upon thirty (30) days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such thirty (30) day period. In addition, Accela may, at its sole option, suspend or terminate Customer's or any Authorized User's access to the Subscription Service, or any portion thereof, immediately if Accela, in its sole discretion: (i) if suspects that any person other than Customer or an Authorized User is using or attempting to use Customer Data (ii) suspects that Customer or an Authorized User is using the Subscription Service in a way that violates this Agreement and could expose Accela or any other entity to harm or legal liability, or (iii) is or reasonably believes it is required to do so by law or court order.

11.3. **Effect of Termination.** If this Agreement expires or is terminated for any reason: (i) Within thirty (30) calendar days following the end of Customer's final Subscription Period, Accela will provide a copy of Customer's data and associated documents in a machine readable format. Accela will comply in a timely manner with such request; provided that, Customer pays any and all unpaid amounts due to Accela; (ii) licenses and use rights granted to Customer with respect to Subscription Services and intellectual property will immediately terminate; and (iii) Accela's obligation to provide any further services to Customer under this Agreement will immediately terminate, except any such services that are expressly to be provided following the expiration or termination of this Agreement; and the sections set forth in Section 11.4 of this Agreement.

11.4. **Survival.** Sections 4 (Confidentiality), 5 (Ownership and Proprietary Rights), 7 (Indemnification), 8 (Limitation of Liability), 11.3 (Effect of Termination), 11.4 (Surviving Provisions), and 12 (General Provisions) will survive any termination or expiration of this Agreement.

12. GENERAL

12.1. **Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) sending by confirmed email if sent during the recipient's normal business hours (or, if not, then on the next business day). Notices will be sent to the address specified by the recipient in writing when entering into this Agreement or establishing Customer's account for the Subscription Service (or such other address as the recipient may thereafter specify by notice given in accordance with this Section 12.1).

12.2. **Governing Law and Jurisdiction.** This Agreement and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions.

12.3. **Compliance with Laws.** Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement including, but not limited to, export laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, Customer will not permit Authorized Users to access or use the Subscription Service in violation of any U.S. export embargo, prohibition or restriction.

Further, in connections with the services performed under this Agreement and Customer's use of the Subscription Services, the Parties agree to comply with all applicable anti-corruption and anti-bribery laws, statutes, and regulations.

12.4. Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or similar relationship between the parties.

12.5. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

12.6. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

12.7. Assignment. Customer may not assign or transfer this Agreement, whether by operation of law or otherwise, without the prior written consent of Accela. Any attempted assignment or transfer, without such consent, will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.8. Publicity. Subject to the provisions of Section 5, each party will have the right to publicly announce the existence of the business relationship between parties. In addition, during the Subscription Period of Customer's Subscription Service use, Accela may use Customer's name) on Accela's website and marketing materials to identify Customer as Accela's customer, and for providing the Subscription Service to Customer; provided that, Accela will use commercially reasonable efforts to adhere to any usage guidelines furnished by Customer with respect to use.

12.9. Force Majeure. Accela will not be liable for any delay or failure to perform under this Agreement to the extent such delay or failure results from circumstances or causes beyond the reasonable control of Accela.

12.10. Entire Agreement. This Agreement, including any attachments hereto as mutually agreed upon by the Parties, constitute the entire agreement between the Parties concerning its subject matter and supersedes all prior communications, agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by a duly authorized representative of each party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in Customer's order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null.

IN WITNESS WHEREOF, the parties hereto have executed this MSA as of the dates listed below.

ACCELA

By: [Signature]
(Signature)

David Kwan
(Print Name)

Its: Senior Vice President, Accounting
(Title) a corporate controller

Dated: May 13, 2019
(Month, Day, Year)

CUSTOMER

By: [Signature]
(Signature)

Ezequiel Vega
(Print Name)

Its: Assistant Director of Health
(Title)

Dated: 06/13/2019
(Month, Day, Year)

ACCELA

By: [Signature]
(Signature)

Maximillian Schoedel
(Print Name)

Its: Secretary
(Title)

Dated: May 14, 2019
(Month, Day, Year)

APPROVED AS TO FORM AND LEGALITY

[Signature]
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

Brian P. Briggs

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey 51749

Exhibit A – Specifications.

Manage All Agency Programs

Manage all programs and streamline all processes with one solution.

We understand the work you do. Working across the nation in so many settings—and participating fully with program administrators and government oversight groups—we know that every program tracks and uses data in different ways. We’ve made it easy to manage functions and information unique to each program’s need.

Food Protection

Verification safeguards against foodborne illness.

- Manage permanent facilities, temporary events, and mobile vendors
- Carry your food code and corrective actions electronically in the field
- Automate inspection scheduling based on risk classification and facility type
- Manage certified food managers and issue food worker cards
- Automate complaint dispatch and streamline response activities
- Publish inspection results to your agency’s website
- Utilize GIS integration to map foodborne illness outbreaks

Recreational Health

Ensure that your community swims safely.

- Verify the health and safety of public bathing areas
- Ensure all pools and spas are free from safety hazards and risk of communicable diseases
- Track inspections and permits
- Perform plan reviews to comply with local/state safety code requirements
- Investigate complaints
- Oversee pool and spa contamination
- Monitor bathing beaches

Sewage System

Monitor system design, construction, and performance.

- Streamline the permit application process for new systems and repairs
- Monitor septic system design and construction process
- Ensure installers and designers certifications are current
- Automate Operations & Maintenance programs
- Track ‘As-Built’ requests, backfill notifications, pumping, and variance applications
- Use a tablet PC to automate the inspection process and incorporate drawings
- Accept service requests online through an Internet portal

Drinking Water

Ensure a healthful supply for every community.

- Track public water systems and the work performed to keep them in compliance
- Manage contact segments, water sites, treatment objectives, and vulnerability monitoring
- Manage inspection and sampling schedules
- Track bacteriological, organics, lead, and copper samples
- Track violations and enforcement activities
- Report electronically to state and federal agencies

Vector Control

Apply technology to monitor and manage vector threats.

- Streamline vector surveillance and control activities
- Automate inspections using handheld Pocket PCs running Windows Mobile
- Identify breeding locations using GPS devices
- Identify species, treatments and follow up requirements
- Manage dead bird reports
- Utilize GIS integration to map West Nile Virus exposures areas
- Notify public of outbreaks on your agency website

Solid Waste

Manage compliance for waste, recycling, and landfills.

- Manage landfills, recyclers, and transfer stations
- Ensure compliance with state, federal, and local regulations
- Monitor inventory, enforcement cases, and closures
- Track transportation methods, weight requirements, etc

Hazardous Materials

Manage community, business, and household exposure.

- Monitor businesses storing hazardous materials inventory
- Track small and large quantity hazardous waste generators and recyclers
- Monitor types and amounts of toxic waste generated
- Track chemical descriptions, characteristics, and container locations
- Attach inventory site plans and emergency response procedures
- Accept online submission of business plans and chemical inventories
- Outfit field inspectors and emergency responders with site information on Tablet PCs
- Import chemical inventories from external systems (i.e., CAMEO)
- Schedule appointments online for household hazardous waste events

Shellfish Sanitation

Manage the process from harvest to consumption

- Manage commercial shellfish operations such as shuckers, packers, and shippers
- Monitor vessels and vehicles involved in transporting shellfish
- Carry National Shellfish Sanitation Program (NSSP) ordinance electronically and print official NSSP reports in the field
- Track annual threatened areas and monitor growing areas for harvest suitability
- Utilize GIS integration to map growing areas

Other Programs

Automate management of any program you monitor

- Tattoo and Body Piercing
- Housing and Public Accommodations
- Schools and Institutional Health
- Medical Environmental Health
- Animal Control
- Underground Storage Tanks
- Site Remediation and Site Assessment
- Individual Water Wells
- Cross Connection
- Gas and Plumbing Construction
- Milk and Dairy
- Ocean Water Monitoring
- Medical Waste
- Bioterrorism/Disaster Preparedness
- Code Enforcement
- Fire Prevention
- Construction Services
- Business Licensing

EXHIBIT B – ACCELA DATA STORAGE POLICY

The Licensee's subscription comes with a limit of 2.5TB data storage for all cloud environments. Data storage includes:

- Transaction data;
- Reference data;
- Configuration data;
- Documents and Report Files;
- Backup copies; and
- Other data stored by Accela on behalf of the customer.

Additional storage can be purchased from Accela in blocks of 500MB, with a price of one thousand dollars (\$1,000) per year. When Licensee approaches the 2.5TB limit, it will begin receiving monthly notifications highlighting data usage levels across its environment. Once the 2.5TB limit is reached, a charge of one thousand dollars (\$1,000) for an additional 500MB will be automatically added to the Licensee's subscription renewal.

Data Retention

Page 4 of 4

If the Licensee's Software as a Service ("SaaS") subscription expires or is otherwise terminated, Contractor will initiate its data retention processes, including the deletion of licensee data from systems directly controlled by Contractor.

- If a Licensee's SaaS subscription expires or is otherwise terminated, Contractor will store its customer data, as defined in the master agreement between Licensee and Contractor, for ninety (90) days (the "Retention Period"). During the Retention Period, provide Licensee with a notice indicating its intention to delete its Customer Data.
- After the Retention Period, Contractor will, within a commercially reasonable amount of time, disable the account and delete the customer data, including any cached or backup copies.

EXHIBIT C – ACCELA SaaS STANDARD SUPPORT POLICY

This Accela SaaS Support Policy (“Support Policy”) is a policy governing the use of Accela software-as- service products (the “Service(s)”) under the terms of the services agreement (the “Agreement”) between Accela, Inc. and its affiliates (“Accela”, “us” or “we”) and the purchaser of Accela’s Service (“Customer”). This Support Policy may be updated from time to time by Accela in its sole discretion.

General Requirements and Hours of Operation

Ticketing Support: Accela will provide access to a ticketing system, which will be available twenty-four (24) hours per day, seven (7) days per week. A qualified support specialist shall use commercially reasonable efforts to answer questions and resolve problems regarding the Subscription Service during normal business hours of Monday-Friday, 4AM-6PM Pacific.

Telephone and E-mail Support: Accela’s Customer Support Department, a live technical support facility, will be available to Customer from 4:00 A.M. until 6:00 P.M. Pacific Standard Time Monday through Friday, excluding Accela’s observed holidays.

Online Support Material: Available twenty-four (24) hours, seven (7) days a week, Accela will make available to Customer certain archived software updates and other technical information in Accela’s online support databases.

Updates

Updates may address security fixes, critical patches, general maintenance functionality, and documentation and shall be made available at Accela’s discretion. Accela is under no obligation to develop any future functionality or enhancements unless otherwise specified in the Agreement. If an update for the Service is made available to Customer pursuant to this Support Policy, it will automatically replace the previous version of the applicable Service.

Where practical, Accela will schedule Updates during non-business hours and will provide Customers with advance notice of all Updates.

Upgrade/Downgrade of Severity Level

If, during the Support Request process, the issue warrants assignment of a higher severity level than currently assigned or no longer warrants the severity level currently assigned based on its current impact on the production operation of the SaaS offering, then the severity level will be upgraded or downgraded accordingly to the severity level that most appropriately reflects its current impact.

Third Party Product Support

If any third-party software is not supplied by Accela, Accela disclaims all support obligations for such third-party software, unless expressly specified by Accela in Customer’s Agreement.

Exclusions

The following Support Exclusions are not covered by this Support Policy: (a) Support required due to Customer’s or any End User’s or third party’s misuse of the Services; (b) Support during times outside of Accela’s regular business hours stated above; (c) Support necessitated by external factors outside of Accela’s reasonable control, including any force majeure event or Internet access or related problems beyond the Service demarcation point; (d) Support of or caused by customizations (if outside of Accela’s best practice recommendations), configuration changes, scripting, or data loss caused by or on behalf of Customer or any End User; (e) Support of or caused by Customer’s or any End User’s or third party’s equipment, software or other technology (other than third party equipment within Accela’s direct control); (f) Support to resolve or work-around conditions which cannot be reproduced in Accela’s support environment and (g) Support of any software add-ons supplied together with the Service (except where specified in the Agreement). Any support services falling within these Support Exclusions may be provided by Accela at its discretion and, if so provided, may be subject to additional pricing and support terms as specified by Accela.

Error Classification

Error Classification	Criteria
Critical Severity Issue (Priority 1)	The Service is down or there is a major malfunction (deeming Service non-functional or severely affected), resulting in a business revenue loss and impacting the Service functionality for a majority of users. No reasonable workaround exists.
High Severity Issue (Priority 2)	High loss of Service functionality or performance, impacting the Service functionality for a high number of users (e.g. Service response is very slow, day to day operations continue, but are impacted by the issue). No reasonable workaround available or the workaround is impractical.
Medium Severity Issue (Priority 3)	Moderate loss of Service functionality or performance, impacting multiple users. A convenient workaround exists (e.g. non-critical feature is unavailable or requires additional user intervention).
Low Severity Issue (Priority 4)	Minor loss of Service functionality or feature in question.

Functional Definitions: For the purposes of error classification, essential or major functions include: data capture features, SLA and alarming features, performance management features and application performance problem resolution features.
Response Time: Accela shall use commercially reasonable efforts to respond to error reports in accordance with the table set forth below. Accela will use reasonable means to repair the error and keep Customer informed of progress. Accela makes no representations as to when a full resolution of the error may be made.

Error Classification	Initial Response and Acknowledgement	Updates	Resolution Goal
Critical	1 Business Hour	Daily	Accela will put forth our best effort to provide a workaround, fix, or estimated completion date within seventy-two (72) hours after the problem has been diagnosed and/or replicated.
High	4 Business Hours	Weekly	Accela will put forth our best effort to provide a workaround or fix or estimated completion date within fourteen (14) business days after the problem has been diagnosed and/or replicated.
Medium	8 Business Hours	As available	Accela will put forth our best effort to provide a workaround or fix or estimated completion date within twenty-one (21) business days after the problem has been diagnosed and/or replicated.
Low	24 Business Hours	None	Resolution for the Issue may be released as a patch set or be incorporated into a future schedule release of the product.

EXHIBIT D – ACCELA, INC. PRIVACY POLICY

Introduction

This Privacy Policy was updated on or about May 17, 2018.

Accela, Inc. and its affiliated companies and subsidiaries (collectively referred to as “Accela,” “we,” or “us”) respect your privacy. This Privacy Policy describes how we collect Information from and about you, what we do with the Information, how we share it, and how we handle the content you place in our products and services. It also explains the choices available to you regarding use of your Personal Information. By providing Content, Information or Personal Information to us including on our website or purchasing our products or services, or signing an agreement that incorporates this Privacy Policy by reference you agree to this Privacy Policy.

Scope of this Privacy Policy

This Privacy Policy applies to the Information we obtain through your use of Accela’s products and services or visitation to Accela websites where this Privacy Policy is posted. It does not apply to any other Information collected by Accela through other means. If you have agreements with Accela for Accela products and services, then those agreements control to the extent of any conflict. Further, this Privacy Policy does not cover the activities of third parties except as specifically stated.

Definitions

Content: any Information or data that you upload, submit, post, create, transmit, store or display in an Accela product or service.

Downloadable Products: Accela’s downloadable software products and mobile applications, including bundles of code, resources, and configuration files that can be used with an Accela product to add new functionality (including product version upgrades) created by Accela that are installed by customers on a device of their choice.

Information: all forms of data, content, and information collected by us.

Personal Information: Information that may be used to readily identify or contact you as an individual person, such as: name, address, email address or phone number. Personal Information does not include Information that has been anonymized such that it does not allow for the ready identification of specific individuals.

Our Collection of Personal Information

Accela collects Personal Information from you at several different points, including but not limited to the following: when we correspond with you as a customer or prospective customer; when you use our products or services; when you visit, register, or otherwise provide us your Personal Information on our website; when you contact us for help; when you interact with our advertising and marketing content; and when you participate at our conferences, attend our webinars, or visit our tradeshow booths.

In using our products or services or requesting Information, you may provide a password for your account, your real name, industry, agency name, job role and contact Information. We may also collect other information including but not limited to the specific Accela product or service being used, the associated license identifier and domain name, the username and IP address or the individual using the product or service function; your credit card number and billing address when purchasing an Accela product or service; analytics Information including aggregated usage data; and other additional Information required to detail the operation of the Accela product or service.

Our Use of Your Information and Personal Information

Accela may use your Information and Personal Information to:

- Deliver the products and services that you have requested, including software updates.

- Manage your customer relationship and provide you with customer support.
- Perform research and analysis about our customers' use of, or interest in, our products, services or content.
- Operate and improve our internal operations, systems, products and services including benchmarking system performance.
- Understand you and your preferences to enhance your experience.
- Respond to your comments and questions, and provide customer service.
- Send you service-related information, including confirmations, invoices, technical notices, updates, security alerts, and support and administrative messages.
- Deliver marketing communications.
- Enforce our terms and conditions.
- Recruit, onboard, and distribute payroll and benefits.
- Communicate with you about products or services that may be of interest to you.

Our Disclosure of Your Personal Information to Third Parties

We may share your Personal Information with third parties only in the ways that are described in this Privacy Policy:

- When we have your permission, including when you choose to share Personal Information including using Accela Community or post to our blogs.
- We may provide your Personal Information to our agents, partners, contractors, vendors or service providers who perform functions on our behalf.
- We may share your information with our current or future "affiliates" (which means a parent company, any subsidiaries, joint ventures, or other companies under common control), in which case we will require our affiliates to honor this Privacy Policy.
- We may disclose Personal Information to comply with laws or in response to legal process, for example, in response to a court order or a subpoena. We also may disclose Personal Information in response to a law enforcement agency's request, or where we believe it is necessary to investigate, verify, prevent, enforce compliance with, or take action regarding: illegal or suspected illegal activities; suspected fraud; situations involving potential threats to the physical safety of any person; protection of the rights and property of Accela, our agents, customers or others; or violations or suspected violations of our agreements, policies or end user license agreements; or as otherwise required or permitted by law, or consistent with legal requirements. We reserve the right to transfer or disclose Personal Information in our system relating to or during negotiation of any merger, financing, acquisition, bankruptcy, dissolution, transaction or other proceeding involving sale, transfer, divestiture or assignment of all or a portion of our business or assets to a different entity.
- Finally, we may also share aggregated, anonymized or statistical information about you, including demographics data, with others for a variety of purposes, including for their own uses, for example, for improving their products and services for Accela and others.

Our Security Measures to Protect your Personal Information

We have put in place reasonable and appropriate physical, electronic, and managerial procedures in an effort to help safeguard Personal Information we collect. However, Accela cannot fully eliminate security risks associated with Personal Information. To help protect yourself, please use a strong password, do not use the same passwords you use with other accounts or services, and protect your usernames and passwords.

End Customer Data

Accela's customer may electronically submit Information to the product or service for processing and storage purposes ("End Customer Data"). We may access or process End Customer Data only for the purpose of providing the product or service or preventing or addressing service or technical problems or as may be required by law. If your Personal

Information has been submitted to us by an Accela customer and you wish to exercise any rights you may have to access, correct, amend, or delete such data, please inquire with the relevant customer directly. Since Accela personnel have limited ability to access Information our customers submit to our products or services, if you wish to make your request directly to Accela, please provide the name of the Accela customer who submitted your data to our product or service. We will refer your request to that customer.

Our Retention of your Personal Information

Personal Information will be retained as long as needed to fulfill legitimate business purposes for which it was collected, including the purposes outlined in this Privacy Policy, or for a period of time specifically required or allowed by applicable regulations or laws. We will also retain and use your Personal Information for as long as necessary to comply with our legal obligations, resolve disputes and enforce our agreements.

Cookies/Web Beacons

When you use our websites, you can usually choose to set your browser to remove cookies and to reject cookies from our servers. If you choose to remove or reject cookies, this could affect certain features or services of our websites. Cookie management tools provided by your browser may not remove Flash cookies. To learn how to manage privacy and storage settings for Flash cookies, go to:

http://www.macromedia.com/support/documentation/en/flashplayer/help/settings_manager.html#117118 (or in the EU [YourOnlineChoices.com](http://www.youronlinechoices.com)).

You can also choose to opt-out of use of cookies by many of our third party advertising partners for delivery of personalized ads by visiting [the Digital Advertising Alliance \(http://www.aboutads.info/choices/\)](http://www.aboutads.info/choices/) in the USA, [Digital Advertising Alliance of Canada \(http://youradchoices.ca/\)](http://youradchoices.ca/) in Canada or the [European Digital Advertising Alliance \(http://www.youronlinechoices.eu/\)](http://www.youronlinechoices.eu/) in Europe.

While we and others give you certain choices, as further outlined in this Privacy Policy, there are many ways that web browser signals and similar mechanisms can indicate your choice to disable tracking, and we may not be aware of nor honor every mechanism.

Your Access to and Amendment of your Personal Information

Our marketing emails tell you how to “opt-out” of receiving further marketing emails. If you opt out, we may still send you non-marketing emails including emails about your accounts and our business dealings with you.

We allow you to access your Personal Information (with proper identification verification), and allow you to correct, amend or delete inaccurate Personal Information, except where the burden or expense of providing such an access is disproportionate to the individual privacy risk, or where the rights of persons other than the requesting individual risk being violated. This information request can be made by sending an email to legal@accela.com.

Children’s Privacy

Because of the nature of our business, our services are not designed to appeal to minors. We do not knowingly attempt to solicit or receive any information from anyone under the age of 13. If you are a parent or guardian and you are aware that your child has provided us with Personal Information, please contact us immediately.

Changes to This Privacy Policy

Accela will notify Customer in writing of all Privacy Policy changes. Please send all written communications for Policy Changes to:

County of Monterey – Health Department
1270 Natividad Road
Salinas, Ca. 93906
Attn: John Ramirez

Contacting Us

If you have questions or suggestions, please email Accela at legal@accela.com. Please send all written communication to:

Accela, Inc.

Attn: General Counsel

2633 Camino Ramon, Suite 500

Bishop Ranch 3

San Ramon, California 94583, United States

EXHIBIT E - AVAILABILITY AND SECURITY

Service Availability:

Accela will use commercially reasonable efforts to (a) provide bandwidth sufficient for Customer's use of the Subscription Services provided hereunder and in an applicable Order Form and (b) operate and manage the Subscription Services with a ninety-nine and one-half percent (99.5%) uptime goal (the "Availability SLA"), excluding situations identified as "Excluded" below.

"Excluded" means any outage that results from any of the following:

- a. Any maintenance performed by Accela during Accela's standard maintenance windows. Accela will notify Customer within forty-eight (48) hours of any standard maintenance and within twenty-four (24) hours for other non-standard emergency maintenance (collectively referred to herein as "Scheduled Maintenance").
- b. Customer's information content or application programming, or the acts or omissions of Customer or its agents, including, without limitation, the following:
 1. Customer's use of any programs not supplied by Accela;
 2. Customer's failure to provide Accela with reasonable advance prior notice of any pending unusual large deployments of new nodes (i.e., adding over ten (10) percent total nodes in less than twenty-four (24) hours);
 3. Customer's implementation of any significant configuration changes, including changes that lead to a greater than thirty percent (30%) change in a one week period or greater than fifty percent (50%) change in a one month period in the number of key objects in the system including but not limited to metrics, snapshots, nodes, events and business transactions; and
 4. Any mis-configuration by Customer (as determined in Accela's sole discretion), including, without limitation, configuration errors and bad or unintended usage of the Subscription Services.
 5. Force majeure or other circumstances beyond Accela's reasonable control that could not be avoided by its exercise of due care.
- d. Failures of the Internet backbone itself and the network by which Customer connects to the Internet backbone or any other network unavailability.
- e. Any window of time when Customer agrees that Subscription Services availability/unavailability will not be monitored or counted.
- f. Any problems resulting from Customer combining or merging the Subscription Services with any hardware or software not supplied by Accela or not identified by Accela in the Specifications as being compatible with the Subscription Services.
- g. Interruptions or delays in providing the Subscription Services resulting from telecommunication or Internet service provider failures. Customer's or any third party's use of the Subscription Services in an unauthorized or unlawful manner.

Remedies for Excessive Downtime:

In the event the Availability of the Subscription Services falls below the Availability SLA in a given calendar month, Accela will pay Customer a service credit ("Service Credit") equal to the percentage of the fees set forth in the table below corresponding to the actual Availability of the Subscription Services during the applicable calendar month. Such Service Credit will be issued as a credit against any fees owed by Customer for the next calendar month of the

Subscription Period or, if Customer does not owe any additional fees, then Accela will pay Customer the amount of the applicable Service Credit within thirty (30) days after the end of the calendar month in which such credit accrued. Such Service Credit will be in addition to any other remedies available to Customer at law, in equity or under this Agreement.

System availability is measured by the following formula: $x = (n - y) * 100 / n$ Notes:

(1) "x" is the uptime percentage; "n" is the total number of hours in the given calendar month minus scheduled downtime; and "y" is the total number of downtime hours in the given calendar month.

(2) Specifically excluded from "n and "y" in this calculation are the exception times on scheduled upgrade and maintenance windows.

Service Availability	Percentage of Monthly Service Fees Credited
>99.5%	0%
95.0% - < 99.5%	5% (max of \$280)
90.0% - < 95.0%	10% (max of \$560)
80.0% - < 90.0%	20% (max \$840)
70.0% - < 80.0%	30% (max of \$1,120)
60.0% - < 70.0%	40% (max of \$1,400)
< 50%	50% (max of \$2,800)

Customer Account Login:

For Accela user interface access, Accela uses TLS 1.2 with AES 256 bit or similar encryption for protection of data in transit, which is supported by most modern browsers. Accela will also restrict applicable administrative user interface access to Customer corporate networks for additional security on written request by Customer.

Hosting:

Accela's SaaS platform (servers, infrastructure and storage) for the Subscription Services is and will remain hosted in one of the largest Tier III data centers in North America, specifically designed and constructed to deliver world-class physical security, power availability, infrastructure flexibility and growth capacity. Accela's data center provider is and will remain SSAE 16/ 18 SOC2 compliant, meaning it has been fully independently audited to verify the validity and functionality of its control activities and processes. Every Server for the Services is and will remain operated in a fully redundant fail-over pair to ensure high availability. Data is and will remain backed up nightly, stored redundantly and will be restored rapidly in case of failure. Accela also provides an off-site backup service, which is available at an additional cost. Security Patching and updates are actively evaluated by engineers and will be deployed based upon the security risks and stability benefits they offer to Accela's SaaS platform and Customers. Accela will attempt to provide customers reasonable prior notice to security changes, updates and patches, unless the delay will lead to a significant risk of impact to customer data.

EXHIBIT F – INSURANCE REQUIREMENTS

Required Coverage. Without in any way limiting Contractor’s liability pursuant to the “indemnification” section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- a) **Commercial General Liability** Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed;
- b) **Commercial Auto Liability** Insurance with limits not less than \$1,000,000 each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-owned, and Hired auto coverage, as applicable;
- c) **Worker’s Compensation**, in Statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness;
- d) **Professional Liability** Insurance, applicable to Contractor’s profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the services;
- e) **Technology Errors and Omissions Liability** coverage, (if applicable) with limits of 2,000,000 each occurrence and each loss. The policy shall at a minimum provide coverage for the following risks:
 - i. Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and
 - ii. Liability arising from any form of malicious software including computer viruses into, or otherwise causing damage to the County’s or third person’s computer, computer system, network, or similar computer related property and the data, software, and program;

Additional Insured

Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

- a) County of Monterey, its Agents, officers, and Employees as Additional Insured.
- b) Such policies will be primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separate to each insured against whom claim is made or suit is brought.
- c) If a Contractor carries or maintains an Umbrella/Excess Liability policy to provide additional coverage or if the contract requires higher limits than what the contractor carries in the primary policies, County shall be added as Additional insured on such policies.
 - i. The policy shall provide “drop-down” coverage where underlying primary insurance coverage limits are insufficient or exhausted.

EXHIBIT G – ORDER FORM

All subscriptions and services provided during the term of this Agreement will require an Order Form with Customer approval.

Customer will submit written request to Accela and Accela will provide an order form with the estimation of costs. Upon approval of the order form, services will commence.

Software and Services	
Order Detail	
General Information	
Customer Name:	Monterey County Health Department
Customer Contact	John Ramirez
Customer Address	Room B300 1270 Natividad Road Salinas, Ca. 93906 Attn: Accounts Payable
Governing Agreement(s)	The attached Agreement, as of the date of last signature.
Term	7/1/18 - 6/30/19
Order Terms	
Order Start Date	Unless otherwise specified in the Special Order Terms: Software Licenses & Subscriptions start on the date of delivery by Accela.
Order Duration	Unless otherwise specified in the Special Order Terms: - Subscriptions continue from the Order Start Date through the number of months listed in this Order Form (or if not listed, twelve (12) months). Thereafter Subscriptions automatically renew annually as calculated from Order Start Date of Customer's first Subscription purchase
Special Order Terms	In the event of an inconsistency between this Order Form, any governing agreement, purchase order, or invoice, the Order Form shall govern as it pertains to this transaction.
Payment Terms	
Currency	USD
Invoice Date	Unless otherwise stated in the Special Payment Terms, invoice for the Grand Total \$ above will be issued on the Order Start Date.
Payment Due Date	Unless otherwise stated in the Special Payment Terms or the Governing Agreement(s), all payments are due on the invoice Date and payable net 30 days .
Special Payment Terms	None unless otherwise specified in this section.
Purchase Order Reference (Optional)	
If Customer requires PO number on invoices, it must be provided to the right and Customer must provide Accela copy of the PO prior to invoice issuance. If no PO number provided prior to invoice issuance date, invoices issued on this Order Form will be valid without a PO reference.	
	PO# (if Required):

EXHIBIT H – SCHEDULE OF RATES/PAYMENT PROVISIONS

A. Schedule of Rates

SKU	Description	Quantity	Unit Price	Ext. Price
SS75DENVONL0001	Envision Monthly License and Support Fee	12	\$3,360.00	\$40,320.00
SS75CPRSAGT0001	FIS/EnvisionConnect Remote Monthly License and Support Fee	12	\$724.50	\$8,694.00
SS75CCEREDT0001	EnvisionConnect Press Agent Monthly License and Support Fee	12	\$640.00	\$7,680.00
Annual Renewal Period 7/1/18 - 6/30/19			Subtotal	\$56,694.00
SS75DENVONL0001	Envision Monthly License and Support Fee	12	\$3,360.00	\$40,320.00
SS75CPRSAGT0001	FIS/EnvisionConnect Remote Monthly License and Support Fee	12	\$724.50	\$8,694.00
SS75CCEREDT0001	EnvisionConnect Press Agent Monthly License and Support Fee	12	\$640.00	\$7,680.00
Annual Renewal Period 7/1/19 - 6/30/20			Subtotal	\$56,694.00
SS75DENVONL0001	Envision Monthly License and Support Fee	12	\$3,360.00	\$40,320.00
SS75CPRSAGT0001	FIS/EnvisionConnect Remote Monthly License and Support Fee	12	\$724.50	\$8,694.00
SS75CCEREDT0001	EnvisionConnect Press Agent Monthly License and Support Fee	12	\$640.00	\$7,680.00
Annual Renewal Period 7/1/20 - 6/30/21			Subtotal	\$56,694.00
Description				
Professional Services not covered under the recurring Software Subscription fees for technical support, customizations, and other application support services on an "as requested" and "as approved" basis by Customer. Order form referenced in Exhibit B of this Agreement will be required for services to commence.				\$50,000.00
Agreement Period of 12/1/18 - 6/30/21			Subtotal	\$50,000.00
Maximum Agreement Amount				\$220,082.00

B. Payment Provisions

For the services described in this Agreement, CONTRACTOR shall bill the COUNTY in the **maximum amount of \$220,082.00**. The payment conditions as specified in Section 3.1 of the body of this Agreement shall apply. COUNTY does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.

Invoices shall be mailed to:

Monterey County Health Department – Environmental Health Bureau
 Room B300
 1270 Natividad Road
 Salinas, Ca. 93906
 Attn: Accounts Payable